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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,043	10/24/2003	H. Charles Li	14698.005US	1547
22870	7590	12/23/2005	EXAMINER	
LAURENCE P. COLTON			FETSUGA, ROBERT M	
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14TH FLOOR			ART UNIT	PAPER NUMBER
ATLANTA, GA 30309-3488			3751	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JWJ

Office Action Summary	Application No.	Applicant(s)	
	10/693,043	LI ET AL.	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 November 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,5,6,9,11-13,15 and 34-46 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,5,6,9,11-13,15 and 34-46 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 18, 2005 has been entered.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "position the elongated member at a distance" language set forth in claim 1, the "structured to hold the elongated member" language set forth in claim 9, the subject matter set forth in claim 11, and the "elongated member at a distance" language set forth in claims 34 and 41, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant did not address the language of claim 9 in the response filed November 18, 2005.

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3. Claims 1, 34, 36 and 43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is unclear as to whether the "water structure" is intended to be part of the claimed combination since structure of the "waterfall handle artificial waterfall" is defined as being connected thereto (lns. 18-19), but no positive structural antecedent basis therefor has been defined.

Claim 34 appears redundant to claim 1 as the "feed water inlet" at line 7 of claim 1 apparently should be --aperture-- to provide antecedent basis for line 12 of the claim. Otherwise, claim 34 is of the same scope as claim 1 when claim 1 is considered drawn to the subcombination of the handle.

Claim 36 is unclear as to whether the "water structure" is intended to be part of the claimed combination since structure of the "waterfall handle" is defined as being connected thereto (lns. 2-3), but no positive structural antecedent basis therefor has been defined. Claim 43 is similarly indefinite.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3, 5, 6 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson.

The Johnson reference discloses a waterfall handle artificial waterfall comprising: an elongated member 32 including a first cooperating end (receiving 34), a second cooperating end (receiving 34), an internal structure having a first chamber 64, a second chamber 67 and a divider 58,60 with a distribution slot 52, and a waterfall slot 36; a first end piece 34; a second end piece 34; attachment means (Figs. 2 and 3); and a water structure 10, as claimed. Re claim 1, elements 42 and 44 are capable of being used as a handle in the functionally recited manner.

Applicant's argue at pages 12-13 of the response Johnson does not disclose the internal structure nor the ends of the elongated member defined in claims 1 and 34. The examiner can

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not agree. Direct correspondence between the structure of applicants' claimed invention and that of Johnson is clearly set forth supra. Applicant's argue at page 13 of the response the elongated member of Johnson is not spaced at a distance from a wall of the water structure. The examiner can not agree. The end pieces 34 (Fig. 2) in Johnson are attached to pipes 30 which are in turn attached to elements 12-28 of the water structure. Since elements 42,44 in Johnson are capable of being used as a handle when the end pieces are so attached, the broad claim language is met by Johnson. Furthermore, it is noted applicants' disclosure does not teach any particular spacing distance to meet the claimed "handle" function.

6. Claims 1-3, 5, 6, 9, 11-13, 15 and 34-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Chartier.

The Chartier reference discloses a waterfall handle comprising: an elongated member 34 including a first cooperating end 31, a second cooperating end 31, an internal structure having a first chamber (defined by 32), a second chamber 33 and a divider 32 with a distribution slot 44, and a waterfall slot 47; a first end piece 28; a second end piece 29; attachment means (Fig. 1); and a water structure (claim 1) 62, as claimed. Re claim 1, element 49 is capable of being used as a handle in the functionally recited manner, especially considering the

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embodiments disclosed at column 5, lines 49-55. Re claim 9, the end pieces 28,29 are circular and therefore are capable of rotation in the functionally recited manner.

Applicant's argue at pages 12-13 of the response Chartier does not disclose the internal structure nor the ends of the elongated member defined in claims 1, 9 and 34. The examiner can not agree. Direct correspondence between the structure of applicants' claimed invention and that of Chartier is clearly set forth supra. Applicant's argue at page 13 of the response Chartier does not disclose an elongated member that is rotatable as recited in claim 9. The examiner can not agree. The end pieces 28,29 in Chartier are rotatable (i.e. able to be rotated) in the same sense as with applicant's invention as disclosed at page 12, lines 3-9. The broad claim language is met by the structure disclosed by Chartier.

7. Claims 1-3, 5, 6 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Gable.

The Gable reference discloses a waterfall handle comprising: an elongated member 10 including a first cooperating end 15, a second cooperating end 16, an internal structure having a first chamber (upstream of 22), a second chamber (downstream of 22) and a divider 22 with a distribution slot 23, and a waterfall slot 12; a first end piece 20; a second end

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piece 20; attachment means 21; and a water structure (claim 1) 2-6, as claimed. Re claim 1, element 12 is capable of being used as a handle in the functionally recited manner.

Applicant's argue at pages 12-13 of the response Gable does not disclose the internal structure nor the ends of the elongated member defined in claims 1 and 34. The examiner can not agree. Direct correspondence between the structure of applicants' claimed invention and that of Gable is clearly set forth supra. Applicant's argue at page 13 of the response the elongate member 10 of Gable is not held a distance from a wall. The examiner can not agree and notes such subject matter is clearly illustrated in Fig. 1 of Gable.

8. Claims 1-3, 5, 6 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson and Bishop.

Although the elongated member of the Johnson water outlet is not disclosed as being used as a handle, attention is directed to the Bishop reference which discloses an analogous water outlet which further includes an elongated member 20 disclosed as being used as a handle (col. 1 lns. 37-45). Therefore, in consideration of Bishop, it would have been obvious to one of ordinary skill in the water outlet art to associate handle usage spacing with the Johnson elongated member in order to enable use as a handle.

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Applicant's argue at page 15 of the response Bishop is "nothing more than a water source". The examiner can not agree. While Bishop indeed does disclose a water source, Bishop further teaches using a water source as a handle (col. 1 lns. 37-45).

9. Claims 1-3, 5, 6, 9, 11-13, 15 and 34-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chartier and Bishop.

To associate handle usage spacing with the Chartier elongated member would have been obvious to one of ordinary skill in the art in consideration of Bishop analogous to the discussion supra.

Re claim 9, although the elongated member of the Chartier water outlet is not disclosed as being rotated, as claimed, attention is again directed to the Bishop reference which discloses an analogous water outlet which further includes an elongated member 20 that is rotated (col. 1 lns. 48-54). Therefore, in further consideration of Bishop, it would have been obvious to one of ordinary skill in the water outlet art to associate rotation with the Chartier elongated member in order to facilitate day/night use.

Re claim 40, although the elongated member of the Chartier water outlet is not cylindrical, as claimed, attention is yet directed to Bishop which discloses a cylindrical elongated member 20. Therefore, in still further consideration of Bishop,

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it would have been obvious to one of ordinary skill in the water outlet art to associate a cylindrical shape with the Chartier elongated member in order to facilitate use as a handle.

10. Applicant's remaining remarks have been fully considered and either have been previously addressed or are not deemed persuasive in view of the prior art as specifically applied in light of the level of skill in the pertinent art.

11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114.

Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action

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is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.



Robert M. Fetsuga
Primary Examiner
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